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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION
19

20 MARK L. MCHUGH, an individual,

21 Plaintiff,

22 v.

23 HILLERICH & BRADSBY CO., a private
24 company,

25 Defendant.

CASE NO. C 07-03677 JSW

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER**

Complaint Filed: July 17, 2007
Trial Date: None Set

26 AND RELATED COUNTERCLAIMS.
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1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly,
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
6 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
7 or responses to discovery and that the protection it affords extends only to the limited information or
8 items that are entitled under the applicable legal principles to treatment as confidential. The parties
9 further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no
10 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
11 that must be followed and reflects the standards that will be applied when a party seeks permission
12 from the court to file material under seal.

13
14 2. DEFINITIONS

15 2.1 Party: any party to this action, including all of its officers, directors,
16 employees, consultants, retained experts, and outside counsel (and their support staff).

17 2.2 Disclosure or Discovery Material: all items or information, regardless of the
18 medium or manner generated, stored, or maintained (including, among other things, testimony,
19 transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery
20 in this matter including, but not limited to, any document (whether in hard copy or computer readable
21 form), thing, deposition testimony, interrogatory answers, responses to requests for admissions and/or
22 production, or other information provided in discovery in this action.

23 2.3 “Confidential” Information or Items: any Disclosure or Discovery Material that
24 contains non-public, confidential, or proprietary information, whether personal or business-related.
25 Certain limited types of “Confidential” Information or Items may be further designated, as defined
26 and detailed below, as “Highly Confidential” Information or Items.

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2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: any Disclosure or Discovery Material identified in Section 2.3 that satisfies one or more of the following categories: (a) the content of any unpublished pending patent applications; (b) trade secrets (as defined in Cal. Civil Code § 3426.1) such as customer lists and proprietary product designs, know-how or proprietary data, confidential research, development, business, financial or commercial information (such as non-public sales information), the disclosure of which may cause harm to the competitive position of the Designating Party; or (c) information relating to unreleased products or products in development.

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7. Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential — Attorneys’ Eyes Only.”

2.8 Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.10 House Counsel: attorneys who are employees of a Party.

2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party or of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party’s. This definition includes a professional jury or trial consultant retained in connection with this litigation.

1 2.13 Professional Vendors: persons or entities that provide litigation support
2 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
3 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
4 subcontractors.

5
6 3. SCOPE

7 The protections conferred by this Stipulation and Order cover not only Protected Material (as
8 defined above), but also any information copied or extracted therefrom, as well as all copies,
9 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
10 parties or counsel to or in court or in other settings that might reveal Protected Material.

11
12 4. DURATION

13 Even after the termination of this litigation, the confidentiality obligations imposed by this
14 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
15 otherwise directs.

16
17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
19 Party or non-party that designates information or items for protection under this Order must take care
20 to limit any such designation to specific material that qualifies under the appropriate standards. A
21 Designating Party must take care to designate for protection only those parts of material, documents,
22 items, or oral or written communications that qualify – so that other portions of the material,
23 documents, items, or communications for which protection is not warranted are not swept
24 unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
26 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
27 unnecessarily encumber or retard the case development process, or to impose unnecessary expenses
28 and burdens on other parties), expose the Designating Party to sanctions.

1 If it comes to a Party's or a non-party's attention that information or items that it
2 designated for protection do not qualify for protection at all, or do not qualify for the level of
3 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
4 withdrawing the mistaken designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this
6 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
7 material that qualifies for protection under this Order must be clearly so designated before the
8 material is disclosed or produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (apart from transcripts of depositions
11 or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL"
12 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of each page that
13 contains protected material. If only a portion or portions of the material on a page qualifies for
14 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
15 appropriate markings in the margins) and must specify, for each portion, the level of protection being
16 asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
17 ONLY").

18 A Party or non-party that makes original documents or materials available for
19 inspection need not designate them for protection until after the inspecting Party has indicated which
20 material it would like copied and produced. During the inspection and before the designation, all of
21 the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
22 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
23 copied and produced, the Producing Party must determine which documents, or portions thereof,
24 qualify for protection under this Order, then, before producing the specified documents, the
25 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
26 CONFIDENTIAL – ATTORNEYS' EYES ONLY") at the top of each page that contains Protected
27 Material. If only a portion or portions of the material on a page qualifies for protection, the
28 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate

1 markings in the margins) and must specify, for each portion, the level of protection being asserted
2 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

3 (b) for testimony given in deposition or in other pretrial or trial proceedings,
4 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
5 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any
6 portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to
8 protection, and when it appears that substantial portions of the testimony may qualify for protection,
9 the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before
10 the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific
11 portions of the testimony as to which protection is sought and to specify the level of protection being
12 asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).
13 Only those portions of the testimony that are appropriately designated for protection within the 20
14 days shall be covered by the provisions of this Stipulated Protective Order.

15 Transcript pages containing Protected Material must be separately bound by
16 the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or
18 nonparty offering or sponsoring the witness or presenting the testimony.

19 (c) for information produced in some form other than documentary, and for
20 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
21 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or
22 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information
23 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
24 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’
25 Eyes Only.”

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1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’ Eyes
3 Only” does not, standing alone, waive the Designating Party’s right to secure protection under this
4 Order for such material. If material is appropriately designated as “Confidential” or “Highly
5 Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party,
6 on timely notification of the designation, must make reasonable efforts to assure that the material is
7 treated in accordance with the provisions of this Order.

8
9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
11 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
12 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its
13 right to challenge a confidentiality designation by electing not to mount a challenge promptly after
14 the original designation is disclosed.

15 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
16 Party’s confidentiality designation must do so in good faith and must begin the process by conferring
17 directly with counsel for the Designating Party. In conferring, the challenging Party must explain the
18 basis for its belief that the confidentiality designation was not proper and must give the Designating
19 Party an opportunity to review the designated material, to reconsider the circumstances, and, if no
20 change in designation is offered, to explain the basis for the chosen designation. A challenging Party
21 may proceed to the next stage of the challenge process only if it has engaged in this meet and confer
22 process first.

23 6.3 Judicial Intervention. A Party that elects to press a challenge to a
24 confidentiality designation after considering the justification offered by the Designating Party may
25 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
26 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.
27 Each such motion must be accompanied by a competent declaration that affirms that the movant has
28 complied with the meet and confer requirements imposed in the preceding paragraph and that sets

1 forth with specificity the justification for the confidentiality designation that was given by the
2 Designating Party in the meet and confer dialogue.

3 The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
5 material in question the level of protection to which it is entitled under the Producing Party's
6 designation.

7
8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a non-party in connection with this case only for
11 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
12 disclosed only to the categories of persons and under the conditions described in this Order. When the
13 litigation has been terminated, a Receiving Party must comply with the provisions of section 11,
14 below (FINAL DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a location
16 and in a secure manner that ensures that access is limited to the persons authorized under this Order.

17 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
18 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose
19 any information or item designated CONFIDENTIAL only to:

20 (a) the Receiving Party's Outside Counsel of record in this action, as well as
21 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
22 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
23 hereto as Exhibit A;

24 (b) the officers, directors, and employees (including House Counsel) of the
25 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
26 the "Agreement to Be Bound by Protective Order" (Exhibit A);

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(c) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(g) the author of the document or the original source of the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit A;

(b) the Receiving Party’s House Counsel, as well as employees of said House Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit A;

(c) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, and (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

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(d) the Court and its personnel, but only in connection with this litigation;
(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A); and
(f) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify the Designating Party, in writing (by fax or email, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

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1 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
4 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
5 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
6 person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d)
7 request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is
8 attached hereto as Exhibit A.

9
10 10. FILING PROTECTED MATERIAL.

11 Without written permission from the Designating Party or a court order secured after
12 appropriate notice to all interested persons, a Party may not file in the public record in this action any
13 Protected Material. A Party that seeks to file under seal any Protected Material must comply with
14 Civil Local Rule 79-5.

15
16 11. FINAL DISPOSITION.

17 Unless otherwise ordered or agreed in writing by the Producing Party, within ninety days after
18 the final termination of this action, each Receiving Party must return all Protected Material to the
19 Producing Party. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
20 compilations, summaries or any other form of reproducing or capturing any of the Protected Material.
21 With permission in writing from the Designating Party, the Receiving Party may destroy some or all
22 of the Protected Material instead of returning it. Whether the Protected Material is returned or
23 destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not
24 the same person or entity, to the Designating Party) by the ninety day deadline that identifies (by
25 category, where appropriate) all the Protected Material that was returned or destroyed and that
26 affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or
27 other forms of reproducing or capturing any of the Protected Material. Notwithstanding this
28 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts,

1 legal memoranda, correspondence or attorney work product, even if such materials contain Protected
2 Material. Any such archival copies that contain or constitute Protected Material remain subject to
3 this Protective Order as set forth in Section 4 (DURATION), above.

4
5 12. MISCELLANEOUS.

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
7 to seek its modification by the Court in the future.

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9 12.2 Execution of Stipulation. Until such time as this Protective Order has been
10 entered by the Court, the Parties agree that upon execution by the Parties, it will be treated as though
11 it has been "So Ordered."

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12.3 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: February 29, 2008

CARR & FERRELL LLP

By: /s/ Christopher P. Grewe
ROBERT J. YORIO
V. RANDALL GARD
CHRISTOPHER P. GREWE

Attorneys for Plaintiff and Counter-Defendant
MARK L. MCHUGH

Dated: February 29, 2008

LOEB & LOEB LLP

By: /s/ Uleses C. Henderson, Jr.
LAURA A. WYTSMA
ULESES C. HENDERSON, JR.

Attorneys for Defendant and Counter-Claimant
HILLERICH & BRADSBY CO.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____

By _____
United States District Judge

GENERAL ORDER 45: ATTESTATION OF SIGNATURES

Pursuant to General Order No. 45, section X(B) regarding signatures, I attest under penalty of perjury that the concurrence in the filing of this document has been obtained from its signatories.

Dated: February 29, 2008

By: /s/ Christopher P. Grewe
CHRISTOPHER P. GREWE

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MARK L. MCHUGH, an individual,

Plaintiff,

v.

HILLERICH & BRADSBY CO., a private
company,

Defendant.

CASE NO. C 07-03677 JSW

**ACKNOWLEDGMENT AND
AGREEMENT TO BE BOUND**

AND RELATED COUNTERCLAIMS.

I, _____, declare under the penalty of perjury, that:

(a) My present employer is _____ and the
address of my present employer is _____
_____;

(b) My present occupation or job description is _____;

(c) I have received and carefully read the Protective Order dated _____, and
understand its provisions. Specifically, I understand that I am obligated, under the Order of the
Court, to hold in confidence and not to disclose the contents of anything marked "CONFIDENTIAL"
or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," except as permitted under the
terms of this Protective Order. I will use the Confidential Information and Highly Confidential
Information solely for purposes relating to the above-captioned litigation. I will never use said
information, directly or indirectly, in competition with the disclosing party nor will I permit others to

1 do so. In addition to the foregoing, I understand that I must abide by all of the provisions of the
2 Protective Order.

3 (d) At the termination of this action or at any time requested by counsel, I will return to
4 counsel for the party by whom I am employed, all documents and other materials, including notes,
5 computer data, summaries, abstracts, or any other materials containing or reflecting Confidential or
6 Highly Confidential Information, which have come into my possession, and will return all documents
7 or things I have prepared relating to or reflecting such information.
8

9 (e) I understand that I am subject to the jurisdiction of this Court for the purposes of
10 enforcing this Order, and I further understand that if I violate the provisions of the Protective Order, I
11 will be in violation of a Court Order and subject to sanctions or other remedies that may be imposed
12 by the Court and potentially liable in a civil action for damages by the disclosing party.
13

14 (f) I hereby appoint _____ [full name] of
15 _____ [full address and telephone number] as my
16 California agent for service of process in connection with this action or any proceedings related to
17 enforcement of this Stipulated Protective Order.
18

19 I declare under the penalty of perjury of the laws of the United States that the foregoing is true
20 and correct.
21

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____
25 [printed name]

26 Signature: _____
27 [signature]
28